

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H/S

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BILL DRAFT 2007-LNz-309* [v.13] (4/2)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/17/2008 9:32:59 AM

Short Title: Recommendations of MH/DD/SA Oversight Comm. (Public)

Sponsors: Representative Insko./Senator Nesbitt.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ENACT VARIOUS LAWS TO IMPROVE THE MENTAL HEALTH,
DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES
SYSTEM, AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT
COMMITTEE ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES,
AND SUBSTANCE ABUSE SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1.1. Expenditure of Service Dollars. - For the purpose of mitigating cash-flow problems that many non-single-stream LMEs experience at the beginning of each fiscal year, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall adjust the timing and method by which allocations of service dollars are distributed to each non-single-stream LME. To this end, the allocations shall be adjusted such that at the beginning of the fiscal year, the Department shall distribute not less than one-twelfth of the LME's continuation allocation and subtract the amount of the adjusted distribution from the LME's total reimbursements for the fiscal year.

SECTION 1.2. There is appropriated from the General Fund to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of six million dollars (\$6,000,000) for the 2008-2009 fiscal year. These funds shall be used to support LMEs in establishing additional regionally-purchased and locally-hosted substance abuse programs. Funds appropriated shall be for the purpose of developing and enhancing the American Society of Addiction Medicine (ASAM) continuum of care at the community level. The Department of Health and Human Services shall work with LMEs in establishing these programs.

SECTION 1.3. There is appropriated from the General Fund to the Department of Health and Human Services, Division of Mental Health, Developmental

1 Disabilities, and Substance Abuse Services, the sum of five hundred thousand dollars
2 (\$500,000) for the 2008-2009 fiscal year. These funds shall be used to contract with an
3 outside vendor for technical assistance to at least five LMEs with the goal of converting
4 five additional LMEs to single-stream status.

5 **SECTION 1.4.** The Department of Health and Human Services shall
6 simplify the current State Integrated Payment and Reporting System (IPRS) to
7 encourage more providers to serve State-paid clients.

8 **SECTION 1.5.** The Department of Health and Human Services shall create a
9 reporting system for both single-stream funding and non-unit-cost reimbursement
10 funding that is readily comprehensible and integrates with payment systems.

11 **SECTION 1.6.** The Department of Health and Human Services shall
12 determine why there have been under- and over-expenditure of State service dollars by
13 LMEs and shall take the action necessary to address the problem. In making its
14 determination the Department shall consult with LMEs and providers. Not later than
15 January 1, 2009, the Department shall report to the House of Representatives
16 Appropriations Subcommittee on Health and Human Services, the Senate
17 Appropriations Committee on Health and Human Services, the Fiscal Research Division
18 and the Joint Legislative Oversight Committee on Mental Health, Developmental
19 Disabilities, and Substance Abuse Services on actions taken to address problem of LME
20 under- and over-expenditure of service dollars.

21 **SECTION 2.1.(a). State-Operated Services.** – In order to temporarily
22 address high admissions to adult acute unit beds in the State psychiatric hospitals, the
23 Secretary of the Department of Health and Human Services may open and operate on a
24 temporary basis the Central Regional Hospital Wake Unit on the Dorothea Dix Campus
25 and may maintain the Wake Unit on the Dix Campus until beds become available in the
26 system.

27 **SECTION 2.1.(b).** G.S. 122C-181(a)(1) reads as rewritten:
28 **"§ 122C-181. Secretary's jurisdiction over State facilities.**

29 (a) Except as provided in subsection (b) of this section, the Secretary shall
30 operate the following facilities:

31 (1) Psychiatric Hospitals:

32 a. Cherry Hospital.

33 a1. **(Contingent effective date, see Editor's note)** Central
34 Regional Hospital.

35 b. **(Contingent repeal date, see Editor's note)** Dorothea Dix
36 Hospital.

37 c. **(Contingent repeal date, see Editor's note)** John Umstead
38 Hospital.

39 d. Broughton Hospital.

40 e. **The Central Regional Hospital Wake Unit on the Dorothea Dix**
41 **Campus.**

42 This subsection expires upon the earlier of July 1, 2009 or the availability of
43 beds at Central Regional Hospital.

1 **SECTION 2.1.(c)** There is appropriated from the General Fund to the
2 Department of Health and Human Services the sum of five million two hundred
3 seventy-four thousand dollars (\$5,274,000) for the 2008-2009 fiscal year. These one-
4 time funds shall be used to support the temporary opening and operation of the Central
5 Regional Hospital Wake Unit on the Dorothea Dix Campus.

6 **SECTION 2.2.(a)** G.S. 130A-383(a) reads as rewritten:

7 **"§ 130A-383. Medical examiner jurisdiction.**

8 (a) Upon the death of any person resulting from violence, poisoning, accident,
9 suicide or homicide; occurring suddenly when the deceased had been in apparent good
10 health or when unattended by a physician; occurring in a jail, prison, correctional
11 institution-institution, State facilities operated in accordance with Part 5 of Article 4 of
12 Chapter 122C of the General Statutes; or in police custody; occurring pursuant to
13 Article 19 of Chapter 15 of the General Statutes; or occurring under any suspicious,
14 unusual or unnatural circumstance, the medical examiner of the county in which the
15 body of the deceased is found shall be notified by a physician in attendance, hospital
16 employee, law-enforcement officer, funeral home employee, emergency medical
17 technician, relative or by any other person having suspicion of such a death. No person
18 shall disturb the body at the scene of such a death until authorized by the medical
19 examiner unless in the unavailability of the medical examiner it is determined by the
20 appropriate law enforcement agency that the presence of the body at the scene would
21 risk the integrity of the body or provide a hazard to the safety of others. For the limited
22 purposes of this Part, expression of opinion that death has occurred may be made by a
23 nurse, an emergency medical technician or any other competent person in the absence of
24 a physician."

25 **SECTION 2.2.(b)** G.S. 122C-31 is amended by adding the following new
26 subsection to read:

27 **"§ 122C-31. Report required upon death of client.**

28 "...

29 "(g) In addition to the reporting requirements specified in subsections (a) through
30 (e) of this section, and pursuant to G.S. 130A-383, every State facility shall report the
31 death of any client of the facility, regardless of the manner of death, to the medical
32 examiner of the county in which the body of the deceased is found."

33 **SECTION 2.2.(c)** There is appropriated from the General Fund to the
34 Department of Health and Human Services, the sum of one hundred fifty-five thousand
35 two hundred twenty-six dollars (\$155,226) for the 2008-2009 fiscal year. These funds
36 shall be used for one additional public health nurse consultant position and other costs
37 associated with the increased investigatory requirements of this section.

38 **SECTION 2.3.** There is appropriated from the General Fund to the
39 Department of Health and Human Services, Division of Mental Health, Developmental
40 Disabilities, and Substance Abuse Services, the sum of thirty million dollars
41 (\$30,000,000) for the 2008-2009 fiscal year. These funds shall be used to expand the
42 Hospital Utilization Pilot Program statewide with a goal of reducing the use of State
43 psychiatric hospital beds for those individuals staying two weeks or less.

1 **SECTION 2.4.** There is appropriated from the General Fund to the
2 Department of Health and Human Services, Division of Mental Health, Developmental
3 Disabilities, and Substance Abuse Services, the sum of one million one hundred thirty-
4 four thousand one hundred sixty-eight dollars (\$1,134,168) for the 2008-2009 fiscal
5 year to implement three pilot programs of the Transitional Residential Treatment
6 Program. One pilot program shall be located in each of the State's three State
7 psychiatric hospital catchment areas.

8 **SECTION 2.5.(a)** There is appropriated from the General Fund to the
9 Housing Trust Fund the sum of ten million dollars (\$10,000,000) for the 2008-2009
10 fiscal year for the Housing 400 Initiative in order to reduce the need for State
11 psychiatric hospitals in the long-term.

12 **SECTION 2.5.(b)** There is appropriated from the General Fund to the
13 Department of Health and Human Services, Division of Mental Health, Developmental
14 Disabilities, and Substance Abuse Services, the sum of two million five hundred
15 thousand dollars (\$2,500,000) for the 2008-2009 fiscal year to continue operating
16 support for an estimated 500 units of the Housing 400 Initiative in order to reduce the
17 need for State psychiatric hospitals in the long-term. It is the intent of the General
18 Assembly that these funds shall be appropriated on a recurring basis.

19 **SECTION 2.6.** Not later than October 1, 2008, the Department of Health
20 and Human Services, Division of Medical Assistance, shall provide for automatic re-
21 enrollment of Medicaid recipients whose Medicaid eligibility had been cancelled
22 because of admission to the hospital. The purpose of automatic re-enrollment is to
23 ensure that upon release from the hospital the eligible Medicaid recipient will have
24 uninterrupted access to care and medications under the Medicaid program.

25 **SECTION 2.7.** The Department of Health and Human Services, Division of
26 Mental Health, Developmental Disabilities, and Substance Abuse Services, shall, within
27 available resources, implement the tiered CAP-MR/DD waiver program in accordance
28 with Section 10.49(dd) of S.L. 2007-323. The Department shall implement the program
29 with four tiers: (i) up to \$10,000; (ii) between \$10,001 and \$25,000; (iii) between
30 \$25,001 and 75,000; and (iv) greater than \$75,000.

31 **SECTION 2.8.** The North Carolina Institute of Medicine shall study and
32 report on the transition for persons with developmental disabilities from one life setting
33 to another, including barriers to transition and best practices in successful transitions.
34 The IOM should conduct this study using funds appropriated for IOM studies in the
35 2007 Session. The study should encompass at least the following topics: (i) the
36 transition for adolescents leaving high school, including adolescents in foster care and
37 those in other settings; (ii) the transition for persons with developmental disabilities who
38 live with aging parents; and (iii) the transition from the developmental centers to other
39 settings.

40 **SECTION 2.9.** The Department of Health and Human Services shall review
41 State-County Special Assistance rates to establish an appropriate rate for special care
42 units for persons with a mental health disability and shall review current rules pertaining
43 to special care units for persons with a mental health disability to determine if additional
44 standards are necessary. The Department shall report its findings and recommendations

1 to the House of Representatives Appropriations Subcommittee on Health and Human
2 Services, the Senate Appropriations Committee on Health and Human Services, the
3 Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities,
4 and Substance Abuse Services, and the Fiscal Research Division not later than January
5 1, 2009.

6 **SECTION 3.1 Community Services.** - In order to ensure accountability
7 for services provided and funds expended for community services, the Department of
8 Health and Human Services, Division of Mental Health, Developmental Disabilities,
9 and Substance Abuse Services, shall develop and implement a tiered rate structure to
10 replace the blended rate currently used for community support services. Under the new
11 tiered structure, services that are necessary but do not require the skill, education, or
12 knowledge of a qualified professional should not be paid at the same rate as services
13 provided by qualified skilled professionals.

14 **SECTION 3.2.** The Department of Health and Human Services, Division of
15 Mental Health, Developmental Disabilities, and Substance Abuse Services, shall
16 develop and implement a service authorization process that separates the assessment
17 function from the service delivery function at the LME level. In developing the process
18 the Department shall consider as an option separate LME assessment centers, the duties
19 of which would include care coordination.

20 **SECTION 3.3.(a).** The Department of Health and Human Services shall
21 conduct a thorough study of the service authorization, utilization review, and utilization
22 management processes and shall develop a plan to return the service authorization,
23 utilization review and utilization management functions to LMEs for all clients. Not
24 later than February 1, 2009, the Department shall report its findings and
25 recommendations to the House of Representatives Appropriations Subcommittee on
26 Health and Human Services, the Senate Appropriations Committee on Health and
27 Human Services, the Joint Legislative Oversight Committee on Mental Health,
28 Developmental Disabilities, and Substance Abuse Services, and the fiscal research
29 division. The Department shall comply with the requirements of S.L. 2007-323, Section
30 10.49(ee). The Department shall not contract with an outside vendor for service
31 authorization, utilization review, or utilization management functions, or otherwise
32 obligate the State for these functions beyond June 30, 2009. The Department shall
33 require LMEs to include in their service authorization, utilization management, and
34 utilization review a review of assessments as well as person centered plans, and random
35 or triggered audits of services and assessments.

36 **SECTION 3.3.(b).** The Department shall require that the licensed
37 professional that signs a medical order for behavioral health services must indicate on
38 the order whether the licensed professional has (i) had direct contact with the consumer,
39 and (ii) has reviewed the consumer's assessment. This requirement shall take effect no
40 later than October 1, 2008.

41 **SECTION 3.4.(a)** G.S. 150B-2(1a) reads as rewritten:

42 "(1a) 'Agency' means an agency or an officer in the executive branch of the
43 government of this State and includes the Council of State, the
44 Governor's Office, a board, a commission, a department, a division, a

council, and any other unit of government in the executive branch. A Except as provided in G.S. 122C-115.4(b)(2), a local unit of government is not an agency."

SECTION 3.4.(b) G.S. 122C-115.4(b)(2) reads as rewritten:

"(b) The primary functions of an LME are designated in this subsection and shall not be conducted by any other entity unless an LME voluntarily enters into a contract with that entity under subsection (c) of this section. The primary functions include all of the following:

...

(2) Provider endorsement, monitoring, technical assistance, capacity development, and quality control. An LME may remove a provider's endorsement if a provider fails to meet defined quality criteria, fails to adequately document the provision of services, fails to provide required staff training, or fails to provide required data to the LME. Notwithstanding any other provision of law to the contrary, when an LME acts on provider endorsements the LME is acting as an agent of the State."

SECTION 3.4.(c) The Department of Health and Human Services shall adopt guidelines for LME periodic review and re-endorsement of providers to ensure that only qualified providers are endorsed and that LMEs hold those providers accountable for the Medicaid and State-funded services they provide.

SECTION 3.5.(a) Effective October 1, 2008, the Title of G.S. 108A-79 reads as rewritten:

"§ 108A-79. Appeals. Appeals of county level decisions."

SECTION 3.5.(b). Effective October 1, 2008, Article 4 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"§ 108A-79.1. Appeals filed by Medicaid applicants, recipients, and providers.

A Medicaid applicant or recipient aggrieved by a decision of the Department to deny, terminate, suspend, or reduce Medicaid eligibility, or to deny, terminate, suspend, or reduce Medicaid services may contest the Department's decision by filing a petition for a contested Medicaid case hearing at the Office of Administrative Hearings in accordance with Article 3 of Chapter 150B of the General Statutes. A Medicaid provider aggrieved by a decision of the Department to reduce, deny, recoup, or recover reimbursement, or to deny, suspend, or revoke a provider agreement may contest the Department's decision by filing a petition for a contested Medicaid case hearing at the Office of Administrative Hearings in accordance with Article 3 of Chapter 150B of the General Statutes. The Medicaid applicant, recipient, or provider, or their respective representatives, must file the petition within 30 days of the mailing of the notice by the Department of the action giving rise to the contested Medicaid case.

SECTION. 3.5.(c) Effective October 1, 2008, Article 3 of Chapter 150B of the General Stautes is amended by adding the following new section to read:

"§ 150B-31.1. Contested Medicaid Cases.

(a) Application. This section applies only to contested Medicaid cases. A contested Medicaid case is a case involving a disputed matter arising under G.S. 108A-

1 79.1. To the extent any provision in this section conflicts with another provision in this
2 Article, this section controls.

3 (b) Simple procedures. The Chief Administrative Law Judge may limit and
4 simplify the procedures that apply to a contested Medicaid case involving a Medicaid
5 applicant, recipient, or provider who is not represented by an attorney. The simplified
6 procedures may include requiring that all prehearing motions be included in the
7 pleadings to be considered and ruled on by the administrative law judge in the course of
8 the hearing of the case on the merits. An administrative law judge assigned to a
9 contested Medicaid case must make reasonable efforts to assist a Medicaid applicant,
10 recipient, or provider who is not represented by an attorney in order to assure a fair
11 hearing and to maintain a complete record of the hearing.

12 (c) Burden of proof. If the petitioner in a contested Medicaid case has not
13 received written notice of the specific basis for the agency action by which the
14 petitioner is aggrieved, the agency has the burden of proof to establish by a
15 preponderance of the evidence the facts necessary to support the agency's action."

16 **SECTION 3.5.(d)** Effective October 1, 2008, the Department of Health and
17 Human Services shall discontinue informal appeals of Medicaid decisions. All informal
18 appeals pending on that date that have not been held on the merits shall be deemed a
19 contested case under Chapter 150B of the General Statutes pursuant to G.S. 108A-79.1
20 and Article 3 of Chapter 150B of the General Statutes. The Department shall provide
21 written notice to all persons aggrieved by the Department's decision affecting Medicaid
22 eligibility, services, and provider agreements of the person's right to file a petition for a
23 contested Medicaid case hearing with the Office of Administrative Hearings. The
24 notice shall further provide that the aggrieved party or the party's representative shall
25 have 30 days from the mailing of the notice by the Department to file the petition with
26 the Office of Administrative Hearings.

27 **SECTION 3.6.** The Department of Health and Human Services, Division of
28 Mental Health, Developmental Disabilities, and Substance Abuse Services, shall study
29 Medicaid waivers, including 1915(b) and (c) waivers, for all LMEs. In cases where
30 Medicaid waivers are not appropriate for all LMEs, the Department shall identify and
31 recommend strategies to increase LME flexibility for innovation. Not later than March
32 1, 2009, the Department shall report its findings and recommendations to the House of
33 Representatives Appropriations Subcommittee on Health and Human Services, the
34 Senate Appropriations Committee on Health and Human Services, the Joint Legislative
35 Oversight Committee on Mental Health, Developmental Disabilities, and Substance
36 Abuse Services, and the fiscal research division.

37 **SECTION 4. Effective date.** - This act becomes effective July 1, 2008.